85-1178

SUPREME COURT, U.S.
FILED
OCT 24 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO. .....

IN THE

SUPREME COURT of the UNITED STATES

Octber Term, 1985

ARNOLD SONDEREGGER,

Petitioner.

vs.

E. F. HUTTON & COMPANY, INC.;
NORMAN W. SINGER; and
ROBERT A. MUELLER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FOR PETITION FOR WRIT OF CERTIORARI

APPENDIX ON PETITION CALLED APPENDIX A,
AND NOW APPENDIX B & C

ARNOLD SONDEREGGER, IN PROPRIA PERSONA
628 S. ARDMORE, APT.22
LOS ANGELES, CALIFORNIA 90005

In SUPREME COURT OF THE UNITED STATES

APPENDIX A
U.S. COURT OF APPEALS FOR NINTH CIRCUIT MEMORANDUM of Decision filed July 26, 1985 was in the Appendix of the Petition for Writ of Certiorari and so call it Appendix A.

APPENDIX B from
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT CA 84-6259

Order of December 5, 1984

Order of April 9, 1985

Order of May 29, 1985

Oral Argument is not necessary June 12, 1985

Order of August 21, 1985

Order September 13, 1985

Mandate issued September 12, 1985

Judgment affirmed filed and entered July 31, 1985

APPENDIX C for the
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Civ83-1414-PAR

MEMORANDUM OF DECISION AND ORDER ON July 2, 1984 and dated July 12, 1984

Memorandum denying RECONSIDERATION August 22, 1984

ORDER ON MODIFICATION JUDGMENT denied (Denied FRCP Rule 60 to set aside decision)

Civil Minutes

Denied grant leave to file related-back Third Amended Complaint

Order Taking Motion off calendar (new) Second Amended complaint (in regards to granting leave to file)

Magistrate's civil minutes of February 13, 1984

Magistrate's amended civil minutes of February 21, 1984
Filed February 23, 1984

Appendix B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant vs. E.F. HUTTON & CO., INC., et al., Defendants-Appellees	No. 84-6259 DC# CV83-1414-PAR Central California ORDER

FILED
DEC 05 1984
Philip B Winberry
Clerk, U.S. Court of Appeals

Before: BARNES, Circuit Judge

Appellant's motion for reconsideration of the November 6, 1984 Motions Attorney order is denied.

The transcript of appellant's deposition, notice of deposition, and exhibits, submitted by appellant on October 26, 1984, shall be lodged by the clerk for such use as the panel that decides

this appeal on its merits wishes to make use of them.

Appellant is granted an extension of time through December 30, 1984 to file the opening brief.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant vs. E.F. HUTTON & CO., INC., et al., Defendants-Appellees	No. 84-6259 DC# CV83-1414-PAR Central California ORDER

FILED
APR 09 1985
Philip B Winberry
Clerk, U.S. Court of Appeals

Appellant is granted an extension through April 29, 1985 to file a reply brief.

A further extension of time, even if unopposed, will be granted only upon a showing of extraordinary circumstances and, in most circumstances, can only be granted by a judge.

This order is subject to reconsideration by a judge if any opposition is

filed within ten (10) days of the entry of the order.

For the Court:

/s/
Joshua R. Steinhauer
Motions Attorney/Deputy Clerk
Local Rule 22

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant vs. E.F. HUTTON & CO., INC., et al., Defendants-Appellees	No. 84-6259 DC# CV83-1414-PAR Central California ORDER

FILED
MAY 29 1985
Philip B Winberry
Clerk, U.S. Court of Appeals

The amended reply brief received from pro se appellant Arnold Sonderegger shall be lodged with the court. The panel that considers the appeal on the merits will give the brief such consideration as it deems appropriate.

This order is subject to reconsideration by a judge if any opposition is

filed within ten (10) days of the entry of the order.

For the Court:

/s/
Susan M. Johnson
Motions Attorney/Deputy Clerk
Local Rule 22

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

P.O. Box 547

San Francisco, California 94101

TO: All Counsel in 84-6259 Sonderegger v. E.F. Hutton & Co.

DATE: June 26, 1985

Dear Counsel:

Upon due consideration of your objection to submission of this case without argument, the Court has decided oral argument is not necessary.

On June 12, 1985, your case was submitted for decision to Judges Choy, Sneed, and Pregerson, CJJ. You will be

promptly notified by mail when the case is decided.

Very truly yours,

Philip B. Winberry
Clerk of Court

By: /s/
Tim Hom
Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant	)	No. 84-6259
vs.	)	ORDER
E.F. HUTTON & CO., INC., et al., Defendants-Appellees	)	FILED AUG 24 1985 Philip B Winberry Clerk, U.S. Court of Appeals

Before: CHOY, SNEED, and PREGERSON, Circuit Judges

Appellant's motion to file supplemental brief is moot.

Appellant's motion for an extension of time to file a rehearing petition is denied.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant vs. E.F. HUTTON & CO., INC., et al., Defendants-Appellees	No. 84-6259 DC# CV83-1414-PAR Central California

FILED
SEP 13 1985
Clerk, U.S. Court of Appeals

Before: CHOY, SNEED, and PREGERSON, Circuit Judges

The appellant's motions for reconsideration of this court's order filed August 21, 1985 are DENIED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff-Appellant vs. E.F. HUTTON & CO., INC., et al., Defendants-Appellees	No. 84-6259 DC# CV83-1414-PAR Central California MEMORANDUM*

FILED
JUL 26 1985
Philip B Winberry
Clerk, U.S. Court of Appeals

Appeal from the United States District Court for the Central District of California
Pamela Ann Rymer, District Judge, Presiding
Submitted** June 12, 1985

Before: CHOY, SNEED, and PREGERSON, Circuit Judges.

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

** The panel finds this case appropriate for submission without argument pursuant to 9th Cir. R. 3(f) and Fed. R. App. P. 34(a).

Affirmed.

(The full text of this memorandum appears in Appendix A.)

SEP 12 1985
MANDATE ISSUED

JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER, Plaintiff/ Appellant	)	No. 84-6259
	)	DC# CV83-1414-PAR Central California
vs.	)	
E.F. HUTTON & CO., INC., et al., Defendants/ Appellees	)	

APPEAL from the United States District Court for the CENTRAL District of CALIFORNIA.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the

CENTRAL District of CALIFORNIA and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the APPEAL judgment of the said District Court in this Cause be, and hereby is AFFIRMED.

FILED and ENTERED July 31, 1985

Appendix C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ARNOLD SONDEREGGER, Plaintiff vs. E.F. HUTTON & CO., INC., et al., Defendants	NO. CV 83-1414-PAR MEMORANDUM OF DECISION AND ORDER

FILED
JUL 02 1984
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF
CALIFORNIA

Defendants have moved for dismissal of this case on the grounds that plaintiff, who is appearing pro se, has failed to comply with the Court's discovery orders. Having repeatedly cautioned plaintiff about the consequences of his failure to obey the Court's orders and after giving plaintiff every reasonable opportunity to bring himself into compliance, the Court now concludes that plain-

tiff cannot or will not comply and that dismissal is the only appropriate sanction.

FINDINGS OF FACT

Plaintiff, appearing pro se, filed this action on March 9, 1983. His complaint alleges violation of the Securities Exchange Act of 1934, 15 U.S.C. S. 78j(b), breach of fiduciary duty, fraud, and breach of contract, and seeks more than $81,000 in compensatory and $162,000 in punitive damages. In brief, plaintiff claims that two account executives at E. F. Hutton defrauded hom of more than $80,000 between December of 1980 and April of 1982 by "churning" his account and refusing to sell stocks in the account when he requested them to do so. The 15-page, four count complaint is full of conclusory allegations and misap-

plied "legalese," and does not begin to meet the minimum requirements of a short and plain statement of the factual basis of plaintiff's claim.

Plaintiff's proposed third (and second) amended complaints do not solve these problems. The third amended complaint is 43 pages long, not including exhibits, and contains 209 paragraphs. The prayer for damages is reduced to about $68,000 in compensatory damages and another $136,000 in punitive damages. However, the factual basis of the claims is essentially the same, except for the inclusion of more confusing and unnecessary detail. Plaintiff lodged the proposed third amended complaint on June 5, 1984. The proposed second amended complaint was lodged on December 6, 1983.

Defendants answered the complaint on April 5, 1983. They denied all liability and raised several affirmative defenses including laches, waiver and estoppel. Shortly thereafter, defendants attempted to initiate discovery. When they noticed plaintiff's deposition, however, he sought a protective order. Magistrate Venetta S. Tassopulos denied plaintiff's motion for a protective order after finding that "no showing for issuance" of the order had been made. Plaintiff's motion for reconsideration was denied by this Court on June 13, 1983 and plaintiff was ordered to appear for his deposition. Defendants commenced the deposition on June 14, but it had to be adjourned without being completed.

On August 4, 1983, the Court set a discovery cut-off of December 31, 1983.

At that time, defendants contemplated serving interrogatories on plaintiff "within two weeks." By the time of the next status conference in the case, October 24, 1983, these interrogatories had been outstanding for some time without plaintiff having responded. Defendants' counsel stipulated to extend the time for plaintiff's response until November 23, 1983 but plaintiff still did not respond. On November 22, 1983, the Court denied an ex parte application by plaintiff seeking a further extension of time within which to file his answers to the interrogatories.

The Court held a settlement conference in the case on December 8, 1983 but settlement was not accomplished. On January 5, 1984, after the discovery cut-off had passed, plaintiff filed his first

motion seeking leave to file an amended complaint. Plaintiff withdrew his request for leave to amend shortly thereafter.

On February 13, 1984, Magistrate Tassopulos granted defendants' motion for an order compelling answers to interrogatories. The Magistrate ordered plaintiff to answer "each and every interrogatory without objection" by March 12, 1984. Although declining to impose any monetary sanctions against plaintiff at that time, the Magistrate indicated that failure by plaintiff to answer the interrogatories on time could result in an award of sanctions. Magistrate Tassopulos also denied a motion by plaintiff for a protective order. This Court denied an ex parte application by plaintiff on March 14, 1984 seeking a further exten-

sion of time to answer the interrogatories.

Having still not received answers to the interrogatories on April 9, defendants moved to dismiss and for an order compelling plaintiff to pay their reasonable attorneys' fees in an amount of $2,000. The Court granted plaintiff one extension of time to respond to the motion and then denied a second request for an extension. On May 7, the Court took the motion off the calendar and indicated that, in the event that the Court deemed an oral argument necessary, it would notify counsel of a new hearing date.

On May 11, 1984, plaintiff filed with the Court a 15-page document purporting to answer 11 of the 62 interrogatories propounded by the defendants. The

"answers" contained lengthy quotations of plaintiff's deposition testimony and other impertinent information. Plaintiff did not explain his failure to answer the remaining interrogatories. However, in other documents filed in the case, plaintiff contended that several of the interrogatories, which asked plaintiff to "identify each . . . statute, ordinance, law or regulation" which he claims defendants violated and to "describe each alleged violation in detail," were "too broad."

Finally, on June 5, 1984, plaintiff filed his motion for leave to file a third amended complaint. At the hearing on plaintiff's motion for leave to amend on July 2, the Court issued a tentative ruling and then orally denied plaintiff's motion. The Court concluded that the

proposed amendment would be futile in that it neither added claims for relief nor satisfied the requirement of a short and plain statement.

In addition, the Court raised defendants' still-pending motion to dismiss and inquired as to plaintiff's compliance with prior discovery. The Court gave plaintiff one more opportunity; and ordered plaintiff to comply fully with the order compelling answers to interrogatories no later than July 9, 1984. On that day, rather than serving answers as ordered, plaintiff filed another ex parte application for an extension of time to answer. The Court denied the application.

DISCUSSION

Rule 37 of the Federal Rules of Civil Procedure authorizes the district

courts to consider a wide range of sanctions, including dismissal, for failure to comply with discovery orders. Wyle v. R. J. Reynolds Indus., Inc., 709 F.2d 585 (9th Cir. 1983). The district court's use of sanctions under Rule 37 is limited by two factors. Id. at 591. The sanctions must be "just," and, secondly, they must be specifically related to the particular claim at issue in the discovery order. Id. Sanctions interfering with a litigant's claim may violate due process when imposed only for purposes of punishment for violations of court orders rather than to redress a discovery violation which threatens the rightful decision of the case. Id. Dismissal as a discovery sanction should be reserved for "extreme cases" where the violations are willful or in bad faith or where they

prejudice an opposing party's ability to present facts in support of its claim or defense. Id. at 589.

Although there is nothing to indicate that the plaintiff in this case is acting in bad faith or with an intent to deceive the opposing party or the Court, his prolonged refusal to provide answers to defendants' initial interrogatories can only be characterized as willful. The Court and the Magistrate have made it very clear to plaintiff that, if this action is to proceed he must cooperate in defendants' attempt to discover the basis of his claims. Knowing this, plaintiff has nonetheless persisted in raising groundless objections to the discovery sought and has refused to provide any meaningful answers on the central issues of the case. Since plaintiff would

clearly be the most important witness were this case ever to reach trial, his refusal to provide meaningful discovery would severely prejudice defendants' ability to present a defense. The Court's ability to reach a rightful decision would also necessarily be impaired.

No other sanction appears adequate to bring about compliance with the Court's orders and to deter future violations of this nature. Deterrence of future violations by this and other litigants is a proper consideration for the Court on this motion. Id. at 589. The Court doubts that any substantial monetary sanction could be collected and thus, such a sanction would not be likely to bring about compliance. Plaintiff has already been given numerous extensions,

second chances, and warnings. He is not entitled to any further indulgence.

Nor does plaintiff's belated filing of answers to a few of the interrogatories merit denial of defendants' motion. A partial, last-minute tender of information does not preclude dismissal where the party has already willfully disobeyed court orders and delayed prosecution of the action. Id. at 591; Chism v. National Heritage Life Ins. Co., 637 F.2d 1328 (9th Cir, 1981). This is such a case.

However, the Court is not persuaded that an award of attorneys' fees, in addition to dismissal, is appropriate here. Moreover, dismissal is sufficient to cure any prejudice to defendants from plaintiff's violation of the discovery orders. Accordingly,

IT IS HEREBY ORDERED that:

1. This action is hereby dismissed with prejudice;

2. Defendants are entitled to their costs in this action in an amount to be determined upon application to the Clerk.

DATED: July 12, 1984.

/s/
Pamela Ann Rymer
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ARNOLD SONDEREGGER, Plaintiff vs. E.F. HUTTON & CO., INC., et al., Defendants	NO. CV 83-1414-PAR MEMORANDUM OF DECISION AND ORDER

FILED
AUG 22 1984
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF
CALIFORNIA

Plaintiff seeks reconsideration of the Court's order, entered July 26, 1984, dismissing this action with prejudice because of plaintiff's failure to comply with certain discovery orders. Since entry of the dismissal order, plaintiff has filed answers to three more of the interrogatories propounded by defendants. By the Court's count, these latest filings still leave 43 of the 62 inter-

rogatories served upon plaintiff unanswered. It has been approximately one year since defendants served these interrogatories.

In support of his motion for reconsideration, plaintiff makes no showing of any of the permissible grounds for such a motion under Local Rule 7.16. He does not contend that there is a material difference in fact or law from the facts and law presented to the Court prior to its entry of the order of dismissal. Nor has plaintiff shown that new material facts have emerged or that a change of law has occurred since the Court's previous ruling. The fact that plaintiff has now answered three more of the long-outstanding interrogatories after his action has been dismissed is not material since the Court has previously ruled that

such last-minute, partial efforts to comply with discovery orders are ineffectual. See Wyle v. R.J. Reynolds Indus., Inc., 709 F.2d 585, 591 (9th Cir. 1983). Finally, plaintiff has not shown that the Court manifestly failed to consider material facts that had been presented to it prior to its ruling on the motion to dismiss. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for reconsideration of the order dismissing this action with prejudice is denied.

DATED: August 22, 1984

/s/
Pamela Ann Rymer
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ARNOLD SONDEREGGER, Plaintiff vs. E.F. HUTTON & CO., INC., et al., Defendants	NO. CV 83-1414-PAR ORDER ON MOTION FOR MODIFICATION OF JUDGMENT

FILED
AUG 30 1984
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF
CALIFORNIA

Having reviewed plaintiff's motion for relief from judgment, the Court has determined to waive oral argument pursuant to Local Rule 7.11 and hereby denies the motion. The alleged clerical error identified by plaintiff is neither an error nor is it material to the Court's ruling on the motion to dismiss. There is no need for correction of the order. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for relief from clerical mistake is DENIED.

DATED: August 30, 1984

/s/
Pamela Ann Rymer
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 83-1414 PAR Date 7/2/84

Title Arnold Sonderegger -v- E F Hutton, & Co.

PRESENT:

HON. PAMELA ANN RYMER, JUDGE

Linda Orona, Deputy Clerk

Elaine Cohen, Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Arnold Sonderegger, pro-per

ATTORNEYS PRESENT FOR DEFENDANTS:

Sandra Malek

PROCEEDINGS: Defendant's motion to dismiss;
Plaintiff's motion for leave to file a related back 3rd amended complaint by FRCP 15(c).

Court issues a tentative ruling.

Plaintiff argues.

Court ORDERS plaintiff to answer interrogatories on or before 7/9/84 as stated

in the tentative ruling or the action will be dismissed.

Court denies plaintiff's motion for leave to file a related back 3rd amended complaint.

Initials of Deputy Clerk ___/s/___

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ARNOLD SONDEREGGER, Plaintiff vs. E.F. HUTTON & CO., INC., et al., Defendants	NO. CV 83-1414-PAR ORDER TAKING MOTION OFF CALENDAR

FILED
MAY 02 1984
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF
CALIFORNIA

Defendants have filed a motion to dismiss and plaintiff's motion for filing of 2nd amended complaint to be heard on May 7, 1984.

On its own motion the Court orders that the hearing of the above motion be taken off calendar and that counsel be relieved from appearing before the Court. If the Court deems oral argument necessary, it will notify counsel and set a

hearing date. If the Court deems oral argument unnecessary (Local Rule 7.11), it will notify counsel of its disposition of the motion by written order as soon as practicable.

DATED: May 2, 1984

/s/
Pamela Ann Rymer
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO. CV 83-1414-PAR (Tx)

DATE: February 13, 1984

TITLE: ARNOLD SONDEREGGER VS. E. F. HUTTON & CO., INC., ET AL.

PRESENT:

HONORABLE VENETTA S. TASSOPULOS,
U.S. MAGISTRATE

Yvonne Estrada, Deputy Clerk

Tape Number 36A

ATTORNEYS PRESENT FOR PLAINTIFFS:

ARNOLD SONDEREGGER
In Propria Persona

ATTORNEYS PRESENT FOR DEFENDANTS:

SHELDON COHEN

PROCEEDINGS: 1. HEARINGS ON DEFENDANT'S MOTION FOR ORDER COMPELLING ANSWERS TO WRITTEN INTERROGATORIES

2. IN CHAMBERS RULING ON PLAINTIFF'S ORDER RE NUMBER OF INTERROGATORIES.

Parties present and argue the matter of the Defendant's Motion for Order Compelling Answers to Written Interrogatories before the Court.

The Court orders the motion granted. Plaintiff is to answer each and every interrogatory without objection within thirty (30) days.

The Court does not impose any monetary sanctions at this time, but if answers are not properly made to the interrogatories, the Defendant may motion the Court for sanction at that time.

IN CHAMBERS

The Court orders the Plaintiff's Motion for Protective Order re number of interrogatories is denied.

COPIES: JUDGE RYMER
PARTIES
MICRO

/s/
Initials of Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

CASE NO. CV 83-1414-PAR (Tx)

DATE: February 21, 1984

TITLE ARNOLD SONDEREGGER vs. E. F. HUTTON & COMPANY, INC., et al.

PRESENT:

HONORABLE VENETTA S. TASSOPULOS, U.S. MAGISTRATE

Yvonne Estrada, Deputy Clerk

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS: IN CHAMBERS MINUTE ORDER

In Plaintiff's oral request re clarification as to due date of answers to interrogatories, the Court rules that the answers must be served on Defendants on or before March 12, 1984.

COPIES: JUDGE RYMER
PARTIES
MICRO

/s/
Initials of Deputy Clerk

or omissions and was thereby induced to engage in the transaction. Schick v. Penn-Dixie Cement Corp., 507 F2d 374, 380 (2nd Cir. 1974). Cert. denied, 421 U.S. 976 (1975). However, in a so-called fraud-on-the market case, "proof of subjective reliance on particular misrepresentations" need not be shown."

"Blackie v. Barrack 524 F2d 891, 906 (9th Cir. 1975) cert. denied, 429 U.S. 816 (1976). In such cases transaction causation will be "inferred from the materiality of the misrepresentation." Id.; see also Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128, 153-54 (1972)

///

"The Court concludes that in a Rule 10b-5 case where the plaintiff has alleged a scheme to defraud, loss causation need not be established between each misrepresentation or omission and the plaintiff's injury."

Those cases and ARRINGTON v. MERRILL LYNCH, PIERCE, FENNER & SMITH INC. 651 F2d 515 (9th Cir. 1981)

Societe Internationale, etc. v. Rogers 78 S.Ct. 1087

Singleton v. Genason 545 F2d 1224 (9th Cir. 1976)

Kehn v. Smith Barny, Harris Upham & Co., Inc. (9th Cir. 736 F2d 1283.

ROBERTSON v. Dean Witter Reynolds, Inc. 749 F2d 530 (9th Cir. Dec. 1984)

///

Patapoff v. Johns-Manville Sales Corp. 267 F2d 863 (9th Cir. 1959)

Foman vs. Davis, 83 S.CT. 227, 371 U.S. 178 (1962)

are the cases on which the Plaintiff-Appellant relies.

The following deals with the facts of the concealed frauds, misrepresentations or omissions and the misleading that were intentional or reckless disregard for the customer's interests, and to which the Plaintiff-Appellant relied to his detriment.

THE PLAINTIFF-APPELLANT presented in the (new) lodged additional SECOND AMENDED COMPLAINT with demand for jury trial, and in the lodged THIRD AMENDED COMPLAINT with demand for a jury trial, good causes of action upon which relief could be granted, but it was not

granted by the district Judge Court of Appeals judges.

Likewise the filed FIRST AMENDED COMPLAINT with demand for jury trial, also, showed some causes of action upon which relief could be granted, but was not recognized by the District Judge and Court of Appeals Judges.

The following shows how the combined violations of the SECURITIES AND EXCHANGE ACT of 1934, with the 78j(b), 10(b), and the SEC rule promulgated thereunder 10(b)-5 were interrelated to state several causes of action upon which relief could be granted, and combined causes injury and damages of consuming the Plaintiff-Appellant's portfolio from $68,432.00 after the slow process of liquidation to $5,418.00 and of that Plaintiff-Appellant owed $3,000.00 to the Universal Studios

credit union, which left $2,000.00 of assets and an old Chrevrolet car.

The Plaintiff-Appellant would like to present that on 11-25-80 he stated to his account executive, at HUTTON at the Universal City Branch, that he would like to sell his 300 Basic Resources N.Y. stock, because it did not pay any dividend and the interest on his debt was high (18%).

NORMAN W. SINGER said,

> "The research analysts say that OCCIDENTAL PETROLEUM is ready to make a quick move up, and if you buy 100 OXY, I will sell the 300 BASIC RESOURCES N.Y. and then, sell it right back."

Plaintiff-Appellant knew that 100 OXY was bought and that 100 Basic Resources N.U was sold.

///

However, on 12-09-80 Plaintiff-Appellant asked NORMAN W. SINGER to sell the OXY that had risen in price from $34.50 to $37.50 and to sell the other stocks that were not rising, but declining in price.

SINGER said,

> "No, I am not selling, but will buy you 100 more OXY. Your account will overtake the high interest on your margin account, because the values will go up."

Then, on December 23, 1980 Plaintiff-Appellant asked SINGER to sell all of his stocks and end the account with HUTTON because he wanted to yet get high profits from his big oil stocks and deduct his debt interest from income tax returns.

SINGER said,

///

"No, why don't you wait. It will lap over into the New Year, anyway, with two holidays of Christmas and New Year."

Plaintiff stated that he wanted it all sold and to end the account with HUTTON at Universal City branch, and SINGER said,

"You have too many stocks, and I don't have time, now."

Plaintiff stated,

"Then, I will have to call for the branch manager."

SINGER said,

"You have already had two account executives and the manager won't give you another one just to end your account."

Plaintiff-Appellant stated,

///

"I want you to have it all sold by December 31, 1980 so, I can get the big profits, and deduct the high margin interest from my account from it."

SINGER said,

"I will see what I can do. You have many stocks to write up."

On January 7, 1981 Plaintiff-Appellant went to the office and stated,

"I was supposed to get the sales slips from selling all of my stocks and did not receive any. My 100 shares of STANDARD OIL OF CALIFORNIA was $115. per share on November 30, 1980 and on December 31, 1980 it had dropped to $99.50, and my portfolio is losing, including the OCCIDENTAL PETROLEUM CORP. back to $34.625."

SINGER said,

> "Your stocks are going to turn around and go even higher than before. You don't have to worry about the high interest rates, because your account is strong and will overtake and pay off the interest."

(The interest rates on 12-30-80 were 22.75%)

Plaintiff-Appellant reiterated that he has sold his 76 STANDARD OIL OF OHIO shares at MERRILL LYNCH at Beverly Hills branch at $94.50 on 06-06-80 and that his account had better stock at that brokerage firm, which included IBM, and other big oil stocks such as SD, SN, UCL and that he had a debt interest to pay off there.

///

SINGER stated that Plaintiff's account was strong and would overcome the high interest charges and make more profit for the Plaintiff.

Plaintiff-Appellant asked to see a supervisor, and was told by SINGER that he had research information and that Plaintiff's portfolio would go high enough, so that, the sales would make more profit and burn off the interest at the same time.

This was misrepresentation, because the interest rates on Plaintiff-Appellant's account was 22.25%, and that the high interest rates cause stock to decline in value, and thus, breached a fiduciary duty to disclose, and further breached a fiduciary duty along with setting up a fraud by OMITTING TO STATE the RISKS that in a margin call, are

double, and would require Plaintiff-Appellant to be forced to sell at drastically lower prices.

Plaintiff-Appellant thought interest would just go on until paid, as it would be at a bank.

Thus, the Plaintiff-Appellant relied to his detriment when on January 23, 1981 SINGER said,

> "I want to buy you 100 shares of LTV Corporation it will make a quick profit. I have research information, but I don't have time to explain it to you."

Plaintiff-Appellant said,

> "I do not know anything about it and do not want it. I just want to stop the high interest and sell."

SINGER said,

///

"It will make a quick profit and then, I will sell it."

Plaintiff-Appellant relied that SINGER would sell very shortly, but each time he asked to have the LTV sold, SINGER said,

"No, buy more,"

until 500 shares of LTV were bought, and SINGER never sold any LTV CORP. stock.

When SINGER bought 100 LTV on 12-23-81, instead of selling all of Plaintiff-Appellant's stock, it culminated the first part of the intentional fraud against the Plaintiff-Appellant, because relied after not being able to see a supervisor, on SINGER's word, which caused the lower prices, because if the Plaintiff-Appellant had known of the margin call troubles and that high

///

interest causes stock to decline, he would nave called the SEC sooner.

On the second time Plaintiff asked Singer on 02-17-81 SINGER again said,

> "I will sell 53 Caesar World and 28 MCA INCORPORATED, if you will buy something else."

Whereupon 100 UNION OIL OF CALIFORNIA were bought and 53 shares of CAESAR WORLD and 28 shares of MCA INCORPORATED were sold.

SINGER again stated,

> "The reason I am not selling all of your stocks is because - just take my word for it - you will make money just holding onto those."

SINGER kept on misleading and misrepresenting and in getting the Plaintiff-Appellant to transfer his stocks to HUTTON at Universal City, and then, on

the First margin call stated the stocks in plaintiff's account had reached bottom and got the plaintiff to rely upon his word by selling 100 MIM HOLDING from Australia at the MERRILL LYNCH branch at Glendale, California and sent the check over for $830.00 in reliance that SINGER said, his account would turn around and not have any more margin calls, but would prosper.

On the second margin call SINGER said,

> "Your account has hit rock bottom now. And, to not sell anymore than you just are required to sell."

And on the Third margin call SINGER said,

> "Now you can really believe the research department that your account has hit bottom and will turn around,"

and again said,

> "I don't have time to talk to you to explain it to you."

And the frauds continued, when, Plaintiff-Appellant asked SINGER to sell his AMERADA HESS stock on 12-14-81, SINGER stated,

> "No, buy more, I am going to buy you 100 more shares of AMERADA HESS."

which thus made 300 shares of AMERADA HESS CORP., the third 100 shares was bought, and SINGER claimed he knew about AMERADA HESS very well, even though Plaintiff-Appellant told him the WALL STREET JOURNAL says the Court of Appeals Judge said, that MOBIL CORP. DEL. had anti-trust problems and AMERADA HESS CORP. would not help, because it would

///

just be adding another oil company to MOBIL CORP.

Again, the stock broker had the Plaintiff-Appellant turned away and made to rely on his claim, not knowing about the COMPANIES.

Finally, when SINGER flatly refused to sell all 500 shares of LTV, Plaintiff-Appellant asked for a new stock broker to sell all of his stock, but was confronted with new branch manager, and a new stock broker, who continued to refuse to liquidate, stating the stocks were ready to go back up. And the interest charges and margin calls consumed Plaintiff-Appellant's account, which caused the injury by omissions, misrepresentation, breach of fiduciary duties, upon which the Plaintiff-Appellant relied to his detriment.

The scheme was a deceptive device all the way through the account.

IN CONCLUSION, it is urged that the Memorandum of Decision and Order to Dismiss with Prejudice be reversed.

That the Petitioner be allowed to make a motion for the endent state claims be first sent to arbitration.

That the Petitioner be allowed to withdraw his punitive damages, because the branch office, errors and frauds should not be put upon the whole company in this case, and because the petitioner does not wish to claim punitive damages in this case.

That a trial by jury be allowed to hear the Federal claims.

That the briefs received by the COURT OF APPEALS FOR THE NINTH CIRCUIT, that were not filed, be filed.

That the case be reversed for proceedings in the lower court including permission to submit a 4th Amended Complaint.

Respectfully submitted by

Arnold Sonderegger

ARNOLD SONDEREGGER
In PROPRIA PERSONA
628 S. ARDMORE, APT. 22
LOS ANGELES, CALIFORNIA 90005

APPENDIX TO THE DECISIONS

OF THE U.S. COURT OF APPEALS

FOR TH NINTH CIRCUIT AS FOLLOWS

PAGES 1 THRU 16.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER,

Plaintiff-Appellant,

v.

E.F. HUTTON & CO., INC., NORMAN W. SINGER and ROBERT A. MUELLER,

Defendants-Appellees.

No. 84-6259
DC # CV 83-1414-PAR

MEMORANDUM*

Appeal from the United States District Court for the Central District of California
Pamela Ann Rymer, District Judge, Presiding
Submitted** June 12, 1985 - San Francisco, CA

Before: CHOY, SNEED, and PREGERSON, Circuit Judges.
///

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

I.

FACTS AND PROCEEDINGS BELOW

In March 1983, the plaintiff brought this action alleging securities fraud against E. F. Hutton and two individual stockbrokers. After the defendants answered the plaintiff's complaint, they attempted to initiate discovery. When they noticed the plaintiff's deposition, however, he responded by filing a motion for a protective order. After that motion was denied, the plaintiff moved for reconsideration. That motion too was denied.

///

///

(** from previous page)
The panel finds this case appropriate for submission without argument pursuant to 9th Cir. R. 3(f) and Fed. R. App. P. 34(a).

In August 1983, the district court ordered that all discovery in the case be completed by December 31, 1983. The defendants then served the plaintiff with a set of sixty-two interrogatories. He did not object to or answer the interrogatories within the thirty day period presecribed by Rule 33(a) of the Federal Rules of Civil Procedure. The defendants stipulated to extend the time for the plaintiff's response until November 23. On November 22, the district court denied the plaintiff's ex parte application for another extension of time.

On December 29, 1983 the defendants filed a motion to compel answers to the interrogatories. The plaintiff's only response was to file another motion for a protective order. On February 13, 1984, a magistrate granted the defendant's

motion, and ordered the plaintiff to answer "each and every interrogatory without objection by March 12, 1984." The magistrate explained that failure to comply with the order could result in dismissal of the plaintiff's action.

In May 1984 the plaintiff gave partial answers to eleven of the simplest interrogatories. The district court, however, found that even these "answers contained lengthy quotations of plaintiff's deposition testimony and other impertinent information." The plaintiff did not explain his failure to answer the remaining interrogatories. In June, rather than attempting to answer any more of the interrogatories, the plaintiff moved for leave to amend his complaint. The district court denied the motion on the ground that the proposed amendment

would be futile because it neither added claims for relief nor satisfied the requirement that pleadings be short and to the point. The court also gave the plaintiff one more week, until July 9, 1984, to comply fully with the order compelling answers to the interrogatories.

On that day, more than a year after the complaint had been filed, and more than nine months after the interrogatories had been served, the plaintiff, rather than providing the answers as ordered, filed yet another ex parte application for an extension of time. The district court denied the application. On July 26, the plaitiff still had not complied with the order, and the district court dismissed the action with prejudice.

///

II.

DISCUSSION

Rule 37 of the Federal Rules of Civil Procedure "authorizes the district court, in its discretion, to impose a wide range of sanctions on a party who fails to comply with the rules of discovery or with court orders enforcing those rules." See Wyle v. R.J. Reynolds Industries, Inc., 709 F.2d 585, 589 (9th Cir. 1983). Our decisions interpreting Rule 37 and the inherent powers of the district court allow dismissal of an action when a party's willful disobedience of discovery orders prejudices an opposing party's ability to present its case or is "utterly inconsistent with the orderly administration of justice." See id. at 589; Phoceene Sous-Marine, S.A. v. U.S.

///

Phosmarine, Inc., 682 F.2d 802, 806 (9th Cir. 1982).

We review a district court's dismissal pursuant to Rule 37 only for an abuse of discretion. We will not reverse an exercise of discretion unless the record leaves a "definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976).

Our review of the record in this case persuades us that the dismissal of the plaintiff's action was not an abuse of discretion. The plaintiff's repeated and prolonged refusal to answer the defendant's interrogatories were fairly characterized by the court as "willful."

///

Both the district court and the magistrate patiently explained to the plaintiff that if the litigation were to proceed at all, it could only be on the basis of his cooperation with the defendants' attempt to discover the basis of his claims. The district court was more than generous in allowing the plaintiff extensions of time in which to prepare answers. He nonetheless persisted in raising vague and untimely objections to the discovery requests and refused to provide any meaningful answers on the central issues of the case.

Some sanction was clearly appropriate, and we cannot say that the district court abused its discretion when it chose to dismiss the action. It appeared highly doubtful that any monetary sanction could have been collected,

and thus could not have been expected to secure compliance with the discovery orders. The plaintiff was given repeated extensions, second chances, and warnings. The district court concluded, and reasonably so, that the plaintiff would never have provided meaningful answers to a significant number of the interrogatories. If the litigation had proceeded, it would only have been at the risk of impairing the court's ability to make a reasonably informed decision on the merits of the case.

The plaintiff's only colorful argument on this appeal is that the magistrate who issued the order compelling the answers abused her discretion when she refused to require the defendants to reduce the number of their interrogatories. Several days before the

defendants served their interrogatories on the plaintiff, the district court for the Central District of California published new local rules of procedure. One of those rules limits to thirty the number of interrogatories a party can be required to answer. The defendants had served the plaintiff with sixty-two interrogatories. The new rules, however, did not take effect until October 1, 1983, at which time the attempted discovery in this case was well underway.

But even if the new rules were applicable to the defendants' interrogatories, the plaintiff waived any right he may have had to object to them. Rule 33(a) of the Federal Rules of Civil Procedure requires that a party answer or object to any interrogatories within 30 days after they are served. Here, the

plaintiff offered no objection to the interrogatories until more than two months after the expiration of the stipulated extension.

Finally, given all the circumstances of this case, it would not have been unreasonable for the magistrate and the district court to conclude that the plaintiff would never have answered even a significant number of the defendants' interrogatories, much less the thirty that could have been required of him under the new local rule. We cannot say that the magistrate's refusal to reduce the number of interrogatories was an abuse of discretion.

The plaintiff's pro se status does not alter our conclusion. His conduct placed him beyond the limits within which he should have been saved from himself by

the patience and forbearance of the district court.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

P.O. Box 547

San Francisco, California 94101

To: All Counsel in 84-6259 Sonderegger v. E.F. Hutton & Co.

Date: June 26, 1985

Dear Counsel:

Upon due consideration of your objection to submission of this case without argument, the Court has decided oral argument is not necessary.

On June 12, 1985, your case was submitted for decision to Judges Choy, Sneed, and Pregerson, CJJ. You will be

///

promptly notified by mail when the case is decided.

Very truly yours,

Phillip B. Winberry
Clerk of Court

By:
Tim Hom
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER,

Plaintiff-Appellant,

v.

E.F. HUTTON & CO., INC., NORMAN W. SINGER and ROBERT A. MUELLER,

Defendants-Appellees.

FILED
August 21, 1985
Phillip B. Winberry
Clerk, U.S. Court of Appeals

No. 84-6259

ORDER

Before: CHOY, SNEED, and PREGERSON, Circuit Judges.

Appellant's motion to file supplemental brief is moot.

Appellant's motion for an extension of time to file a rehearing petition is denied.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARNOLD SONDEREGGER,

Plaintiff-Appellant,

v.

E.F. HUTTON & CO., INC., NORMAN W. SINGER and ROBERT A. MUELLER,

Defendants-Appellees.

FILED
Sep 13, 1985
Clerk, U.S. Court of Appeals

No. 84-6259

DC No. CV 83-1414-PAR
Central California

Before: CHOY, SNEED, and PREGERSON, Circuit Judges.

The appellant's motions for reconsideration of this court's order filed August 21, 1985 are DENIED.